

Before the
Federal Communications Commission
Washington, D.C. 20554

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DEC 17 1999

In the Matter of)
)
Federal-State Joint Board on)
Universal Service:)
Promoting Deployment and)
Subscribership in Unserved)
And Underserved Areas, Including)
Tribal and Insular Areas)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-45

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**COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above-captioned proceeding. Specifically, the Commission seeks comment on removing impediments to providing telecommunications services to unserved and underserved areas, including tribal lands and insular areas.²

A. Introduction

CTIA has consistently supported the Commission's efforts to facilitate service to Indian Americans living on tribal lands.³ CTIA has also supported wireless carriers'

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (CMRS) providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² In the Matter of Federal-State Joint Board on CC Docket No. 96-45 Universal Service: Promoting Deployment and Subscribership in Unserved And Underserved Areas, Including Tribal and Insular Areas, *Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, released September 3, 1999.

³ See CTIA comments, filed June 28, 1999, BO Docket No. 99-11. See CTIA comments, filed July 27, 1999, CC Docket 96-45 (supporting Petition of Smith Bagley, Inc. for ETC designation to Reservations in Arizona and New Mexico). See CTIA

efforts to serve rural and/or high cost areas, whether they are unserved or underserved.⁴

This rulemaking is important because it seeks to identify obstacles to serving these areas, including state and federal regulatory barriers. CTIA's prior comments have identified obstacles and possible solutions to providing affordable service to these areas. The focus of these comments is the same.

B. Two of the Challenges to Providing Wireless Telecommunications Service to Indian Reservations, Unserved and Underserved Areas Are Cost of Service and Lack of Cost Recovery

Many Reservations are characterized by large tracts of thinly populated and rural areas.⁵ Unserved and underserved areas may be marked by the same characteristics, characteristics that make these areas difficult business cases. The Commission's policy initiatives must account for marketplace realities and investment expectations by making the provision of service to these high cost areas more economic.

Wireless technology may provide a relatively better economical alternative. CTIA recently noted in one of its publications:

Wireless can be the least-costly alternative for providing service in rural and remote areas. Wireless systems enjoy an advantage in that the incremental cost of adding additional users is marginal compared to the wireline systems. Once deployed, wireless enjoys significantly lower costs relative to system maintenance, while preserving a readier capability of expanding to meet market

comments filed October 12, 1999, CC Docket 96-45 (supporting Petition of Western Wireless Corporation for ETC designation to the Crow Reservation).

⁴ See CTIA comments filed September 2, 1999, and reply comments filed September 17, 1999, CC Docket No. 96-45, DA 99-1356 (supporting Petition of Western Wireless for preemption of an order of the South Dakota PUC).

⁵ See Department of Interior Lands Under Jurisdiction of the Bureau of Indian Affairs, as of December 31, 1996; See, U.S. Bureau of Census, 1990 Census Population, American Indian, Eskimo, and Aleut Population, Table No. 51.

demand. The economies of wireless further allow consumers to benefit from the ability of wireless systems to adjust to demand for additional services.⁶

However, recovery of the cost of serving unserved and underserved areas is still an important factor for wireless companies. In recent testimony on Senate Bill S.401, which addresses business development and trade promotion for Native Americans, Western Wireless Corporation indicated that “the challenges to delivery of telecommunications service to Indian Reservations are rooted in the cost of providing service and the lack of a cost recovery mechanism which allows competitive carriers to provide affordable telecommunications service.”⁷

C. Universal Service Support Should Be Readily Available To Wireless Carriers

Universal service support is critical to facilitating the provision of wireless services to high cost areas. Without support funds, the delivery of wireless telephone services to high cost areas at affordable rates is not economic. The Commission has the authority to alleviate the economic constraints that inhibit a carrier’s ability to offer service in high cost areas, and it must exercise that authority commensurate with its policy goals.

Universal service support is available for eligible telecommunications carriers as designated pursuant to Section 214(e).⁸ Section 214(e) provides for designation of ETC status by State commissions and by the FCC.⁹ Pursuant to Section 214(e)(2), state commissions grant ETC status to common carriers for service areas designated by the

⁶ CTIA Research Report: Wireless Local Loop Around the World, December 1999.

⁷ Western Wireless Corporation, Testimony on S.401, “To Provide for Business Development and Trade Promotion for Native Americans,” May 6, 1999.

⁸ 47 U.S.C. Section 254(e).

⁹ 47 U.S.C. Section 214(e).

state.¹⁰ Pursuant to Section 214(e)(3), an unserved community or portion thereof that requests services supported by federal Universal Service support may receive such services from an ETC designated by the FCC, with respect to interstate services, or by State commission, with respect to intrastate services. Pursuant to Section 214(e)(6), a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission must be designated by the FCC. Therefore, under Sections 214(e)(3) and (e)(6), the FCC has the authority to grant ETC status to carriers who intend to offer service on tribal lands, unserved areas and underserved areas.

Section 214(e)(6) provides for the grant of ETC status to carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) provides, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.

The plain language of the statute provides the FCC with authority to grant ETC status to a requesting wireless carrier when the state commission lacks jurisdiction over the carrier.

There are several petitions for ETC designation currently pending before the Commission on this point.¹¹

¹⁰ 47 U.S.C. Section 214(e)(2).

¹¹ See Petition for Designation as an Eligible Telecommunications Carrier, filed September 8, 1999, Cellco Partnership d/b/a Bell Atlantic Mobile; Petition for Designation as an Eligible Telecommunications Carrier, filed September 29, 1999, Western Wireless Corporation.

Additionally, the legislative history of Section 214(e)(6) provides that this statute is to be used to enable carriers serving on tribal lands to obtain ETC status from the FCC. As CTIA has previously stated, service offerings to Native American residents and businesses on tribal lands fall entirely within the scope of the FCC's authority. The language of Section 214(e)(6) is unambiguous regarding the FCC's authority. The legislative history of Section 214(6) indicates that Congress amended the scheme of Section 214(e) regarding state commission designations of ETC status out of fear that service to Indian Reservations would be adversely affected. Section 214(e)(6) was necessary to preserve the ability of carriers who operate on Indian lands to be eligible to receive federal Universal Service support. Congressman Tauzin aptly summarized Senate Bill 1354, which amends the Communications Act of 1934 to include Section 214(e)(6):

Failure to enact S. 1354, may force rates to increase for local telephone service in many Native American communities as a result of certain carriers being excluded from the definition of an "eligible telecommunications carrier" under the Communications Act. S.1354 makes a technical correction to the Act that will make it possible for telephone companies serving areas not subject to the jurisdiction of a State Commission, to be eligible to receive federal Universal Service support. The support will be necessary to keep local telephone rates affordable in these areas.¹²

Thus, Congress clearly intended to remove the impediment to carriers offering telephone service to Indian Reservations to receive universal service support funds and recognized that carriers are not subject to state jurisdiction for these services. To achieve the policy goals presented in this NPRM, the Commission must use its authority to grant ETC status

¹² Vol. 143, No. 160, Cong. Rec. H10809 (daily ed. November 13, 1997) (statement of Rep. Tauzin).

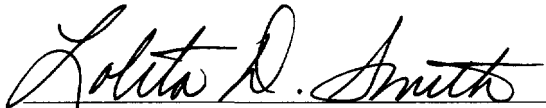
to wireless carriers and alleviate some of the financial obstacles to providing service on tribal lands.

If unserved and underserved areas, including tribal lands, are to benefit from the promise of the Telecommunications Act of 1996, it is vitally important that wireless carriers be given a meaningful opportunity to offer service to consumers in these areas. Federal universal service support funds help make service offerings in these areas economically feasible.

D. Conclusion

The Commission should exercise its authority to alleviate the financial obstacles to providing service by granting ETC status to wireless carriers for service to unserved areas, underserved areas and tribal lands.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lolita D. Smith". The signature is written in dark ink and is positioned above the printed name and title.

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